Office-Supreme Court, U.S.
FILED
FEB 4 1983
ALEXANDER L. STEVAS
CLERK

No. 82-1081

In the Supreme Court of the United States

OCTOBER TERM, 1982

ESTATE OF WILLIAM A. FRIEDERS, DECEASED,
ELMER FRIEDERS, EXECUTOR, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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In this federal estate tax case, the decision below affirmed the Tax Court's factual finding as to the fair market value of a parcel of real estate and the Tax Court's post-trial ruling denying petitioner leave to file an untimely motion to vacate its decision. The case is fact-bound and does not warrant further review by this Court.

The pertinent facts may be summarized as follows: William Frieders died on May 14, 1973, owning, inter alia, approximately 92 acres of real estate located in Naperville Township, DuPage County, Illinois, about 30 miles west of Chicago (Pet. App. 2a, 10a). For estate tax purposes, petitioner valued this property at $2,000 per acre (Pet. App. 2a, 10a). On audit, the Commissioner determined a deficiency, based upon a value of more than $5,000 per acre (Pet. App.

2a, 23a).[1] Petitioner brought this proceeding in Tax Court, seeking a redetermination of the deficiency (Pet. App. 2a). At trial, the Commissioner presented a witness who valued the property at $5,000 an acre, based primarily on the selling prices of six properties located near the Frieders farm. Five of the six properties were bought by an investors' trust as part of an assemblage at prices ranging from $5,693 to $7,653 an acre. The sixth property sold at $5,090 an acre. The Commissioner also attempted to show the fair market value of the property by introducing county assessment records which, pursuant to an Illinois statute requiring that property be assessed at its fair cash value, placed a value on the Frieders farm of $4,986 an acre for 1972. Petitioner presented two witnesses who testified that the properties relied on by the Commissioner's expert were not comparable because they involved sellers who were induced to sell only because of the high prices arising out of the investors' need to buy properties as part of an assemblage. Another witness on behalf of petitioner testified that the value of Illinois farmland generally increased by 341 per cent between 1973 and 1979 (Pet. App. 2a-3a).

The Tax Court, relying principally on the testimony and report of the Commissioner's witness, found that the fair market value of the Frieders farm was $5,000 an acre in

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[1]The pertinent statute is Section 2031(a) of the Internal Revenue Code of 1954 (26 U.S.C.), which provides that the gross estate of a decedent shall include the value of all property owned by the decedent at the time of death. Such property is to be included at its "fair market value at the time of the decedent's death." Treasury Regulations on Estate Tax (1954 Code), Section 20.2031-1(b) (26 C.F.R.) Fair market value is measured by what a willing buyer would pay a willing seller when neither is under any compulsion to buy or sell the property and both are reasonably informed as to all relevant facts. *Ibid.* See also *United States* v. *429.59 Acres of Land*, 612 F.2d 459, 462 (9th Cir. 1980); *United States* v. *344.85 Acres of Land*, 384 F.2d 789, 791 (7th Cir. 1967).

1973 (Pet. App. 43a). After the Tax Court filed its Memorandum Findings of Fact and Opinion, but seven months before the Tax Court entered its decision (which was delayed due to the time taken to compute the deficiency under Tax Ct. R. 155), the Frieders farm was sold on December 20, 1980, for $5,000 an acre. Approximately 10 months later, on October 13, 1981 — nearly two months after the deadline for filing such a motion under Tax Court Rules — petitioner submitted a motion to vacate or revise the decision based on the evidence of the actual sales price of the Frieders farm. The Tax Court denied leave to file the motion out of time (Pet. App. 3a, 44a, 58a).

The court of appeals held that the Tax Court finding as to valuation was not clearly erroneous and that the Tax Court did not abuse its discretion in refusing to consider the post-trial evidence (Pet. App. 8a).

1. The court of appeals properly concluded that there was ample evidence to support the Tax Court's finding as to valuation. Such a factual question does not warrant further review by this Court. *Comstock* v. *Group of Institutional Investors,* 335 U.S. 211, 214 (1948). Petitioner renews its argument (Pet. 12-20), rejected by the courts below, that the sales relied upon by the Commissioner's witness were not of properties comparable to the Frieders farm. Petitioner points out that other courts in other factual contexts have seen fit to exclude evidence of particular sales. In this instance, however, the sales in question were of similar farmland in close proximity to the Frieders farm, and they occurred at about the time of the decedent's death. The fact that five of the properties had been sold as part of an assemblage — which is the crux of petitioner's argument —is a purely factual matter that goes to the weight and not the admissibility of the sales. As the court of appeals noted, one comparable property that was not part of an assemblage

had been sold for $5,090 an acre, and, at all events, the Tax Court's finding "appears to have assumed that assemblage purchases bring higher prices" (Pet. App. 6a).

2. The court of appeals likewise correctly upheld the Tax Court's admission of assessment records as evidence of the property's fair market value because at the time of the decedent's death, Illinois law required that the assessed value be related to market value. Under Ill. Rev. Stat. ch. 120, § 501 (1971), property had to be assessed at its "fair cash value," defined as fifty percent of the actual value (*id.* § 482(24)). *Mercer County* v. *Wolff*, 237 Ill. 74, 86 N.E. 708, 711 (1908), upon which petitioner relies (Pet. 21-24), is distinguishable. There, the trial court refused to admit the assessed value of property as shown in the assessor's records. There was no attempt in that case to establish any connection between assessed value and fair market value.

3. The court of appeals also correctly held (Pet. App. 7a-8a) that the Tax Court did not abuse its discretion in denying petitioner leave to file its untimely motion to vacate the Tax Court decision. Under Tax Court Rules, such a motion must be filed within 30 days after the decision has been entered, unless the court shall otherwise permit. Tax Ct. R. 162. Thus, petitioner had eight months after the sale in which it could have filed a motion without the court's permission. Since petitioner gave no excuse for the delay, the court of appeals properly concluded that the interest in avoiding piecemeal and protracted litigation justified the Tax Court's refusal to consider evidence known to the petitioner long before the decision was entered. See *Kouf-man* v. *Commissioner*, 69 T.C. 473, 476 (1977). At all events, as the court of appeals noted (Pet. App. 7a-8a), the

additional evidence would have been of dubious significance, since it appears that the value of the Frieders farm was inflated in 1973 by the anticipated nearby construction of a new freeway, plans for which had been abandoned by the time of the property's sale in 1980.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

FEBRUARY 1983

DOJ-1983-02